



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2003

Mr. Anthony S. Corbett
Freeman & Corbett, LLP
2304 Hancock, Suite 6
Austin, Texas 78756

OR2003-6252

Dear Mr. Corbett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187287.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for certain "invoices and records of payment" for a specified period of time. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.105 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that portions of the submitted information, which we have marked, are subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

- (16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(16). The information that we have marked constitutes information contained in a bill for attorney's fees. We note that you do not claim that any portion of this information is protected from disclosure under the attorney-client privilege. Thus, the

district must release this marked information to the requestor, unless it is expressly confidential under other law. Although the district claims that this marked information is excepted from disclosure pursuant to section 552.105 of the Government Code, we note that section 552.105 is a discretionary exception to disclosure under the Public Information Act (the "Act") that does not constitute "other law" for purposes of section 552.022. *See Open Records Decision No. 564 (1990)* (governmental body may waive statutory predecessor to section 552.105).¹ Accordingly, we conclude that the district may not withhold any portion of this marked information under section 552.105 of the Government Code. Consequently, the district must release this marked information to the requestor in its entirety.

We now address your section 552.105 claim with regard to the remaining submitted information. Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982)*. Information excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted so long as the transaction relating to those negotiations is not complete. *See Open Records Decision No. 310 (1982)*. A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" *Open Records Decision No. 357 at 3 (1982)* (quoting *Open Records Decision No. 222 (1979)*). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See Open Records Decision No. 564 (1990)*.

¹ Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g., Open Records Decision Nos. 630 at 4 (1994)* (governmental body may waive attorney-client privilege, section 552.107(1)), *551 (1990)* (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), *522 at 4 (1989)* (discretionary exceptions in general), *473 (1987)* (governmental body may waive statutory predecessor to section 552.111); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

You indicate that the district is in the process of acquiring property necessary for the development of a district water treatment plant and transmission line project. You also indicate that the release of the requested information would harm the district in connection with its negotiations with landowners for the purchase of certain real property interests. You state that the district has not yet announced to the public the specific location of the pipeline route or water treatment plant and has not yet secured the referenced parcels of property or easement interests in connection with this planned project. Based on our review of your representations and the remaining submitted information, we agree that section 552.105 is applicable to this information. Accordingly, we conclude that the district may withhold the remaining submitted information pursuant to section 552.105 of the Government Code.²

In summary, the district must release the marked section 552.022 information to the requestor in its entirety. The department may withhold the remaining submitted information pursuant to section 552.105 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

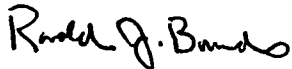
² Because we base our ruling on section 552.105 of the Government Code, we need not address the applicability of your remaining claimed exception to disclosure.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 187287

Enc. Marked documents

c: Mr. John C. McLemore
8400 Cornerwood Drive
Austin, Texas 78717
(w/o enclosures)